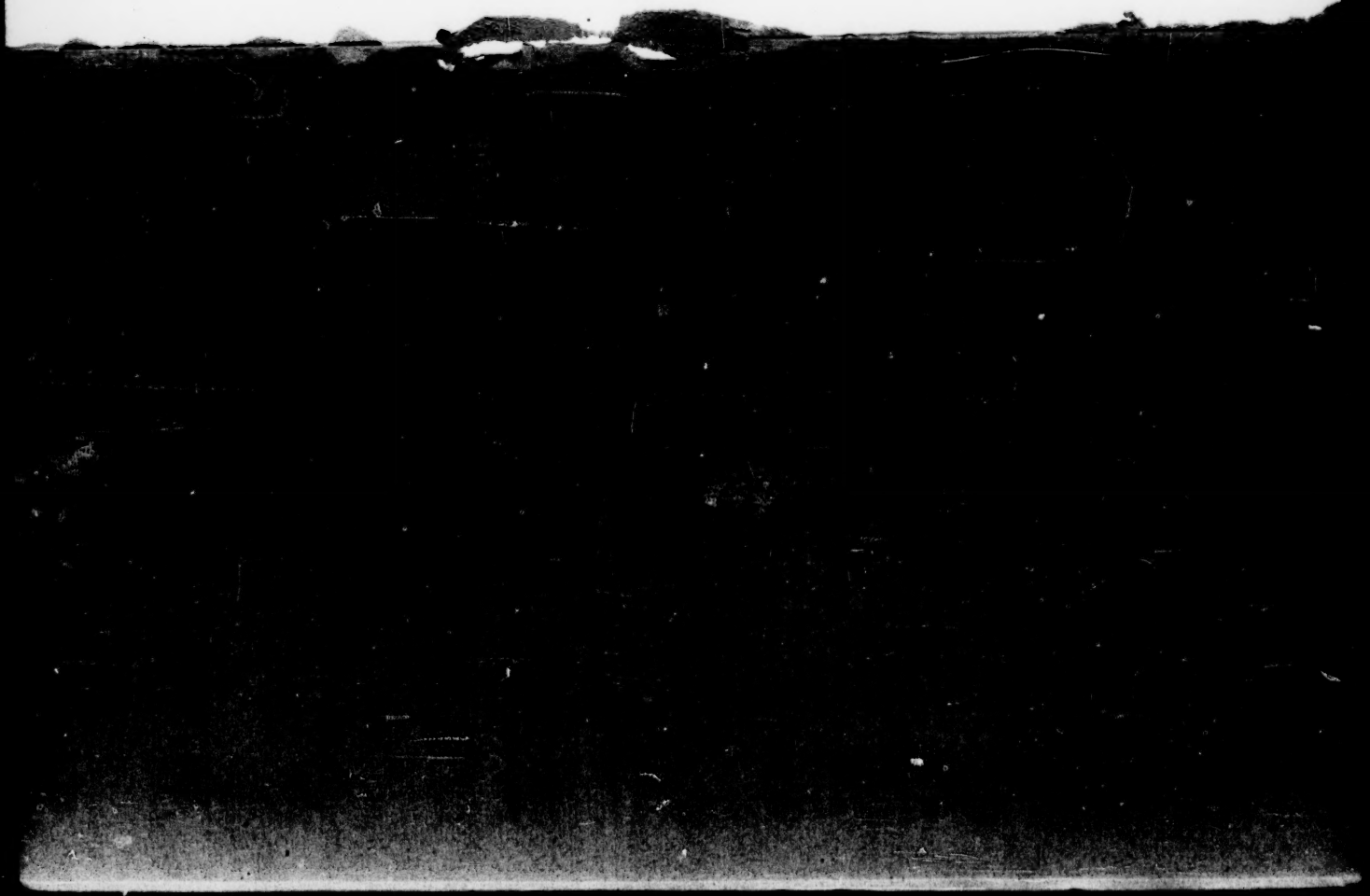

SUPREME COURT OF THE UNITED STATES.

No. 230.

THE ILLINOIS CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM BARRON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Declaration	5	2
Demurrer	13	5
Amended declaration	15	6
Plea	24	9
Jury sworn	25	9
Verdict	27	10
Bill of exceptions	27	10
Judgment	49	18
Bond	50	18
Stipulation	52	19
Clerk's certificate	53	19
Writ of error	54	19
Citation and service	56	20
Assignment of errors	58	20

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court room, in the city of Chicago, in the district aforesaid, before the Honorable David Davis, one of the justices of the Supreme Court of the United States, presiding, and the Hon. Thomas Drummond, district judge of said district, associate judges of said circuit court, on Monday, the twenty-fifth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-ninth year.

WM. H. BRADLEY, *Clerk.*

WILLIAM BARRON
vs.
ILLINOIS CENTRAL RAILROAD COMPANY.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the eleventh day of February, in the year of our Lord one thousand eight hundred and sixty-three, came William Barron, plaintiff, by Messrs. Clark, Cornell & Norton, his attorneys, and filed
2 in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his bond for costs in the above-entitled cause; and also at the same time filed his præcipe for writ of summons; which said bond and præcipe are in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*
Circuit court, of the March term, A. D. 1863.

WILLIAM BARRON
vs.
ILLINOIS CENTRAL RAILROAD COMPANY. } In trespass on the case.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him hereby agree and stipulate that execution may issue against our property for any costs taxed against him.

Dated this tenth day of February, A. D. 1863.

CLARK, CORNELL & NORTON.

Endorsed: Filed Feb'y 11th, A. D. 1863.

WM. H. BRADLEY, *Clerk.*

3 UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*
Circuit court, of the March term, A. D. 1863.

WILLIAM BARRON
vs.
ILLINOIS CENTRAL RAILROAD COMPANY. } In trespass on the case. Damages, $5,000.

The clerk of said court will issue a summons of in the above cause, directed to the marshal of said district, in a plea of trespass on the case, returnable on the second day of March, A. D. 1863, to the damage of the plaintiff of five thousand dollars.

Chicago, Feb'y 10th, 1863.

CLARK, CORNELL & NORTON,
Plaintiff's Attorneys.

To WILLIAM H. BRADLEY, Esq., *Clerk.*

Endorsed: Filed this 11th day of February, 1863.

WM. H. BRADLEY, *Clerk.*

On the same day, to wit, the eleventh day of February, A. D. 1863, a writ of summons issued out of said clerk's office against said defendant in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES, *Northern District of Illinois, ss:*

4 The United States of America to the marshal of the northern district of Illinois, greeting:

We command you that you summon the Illinois Central Railroad Company, if it shall be found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, at the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of March next, to answer unto William Barron in a plea of trespass on the case, to his damage, as he alleges, of five thousand dollars, and have you then and there this writ.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 11th day of February, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the 87th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

I have this 16th day of February, A. D. 1863, served the within writ by leaving a copy of the same in the hands of Osborne, president of the within-named Illinois Central Railroad Company.

J. R. JONES, *U S. Marshal,*
By GEO. L. WEBB, *Deputy.*

5 Endorsed: Filed Sept. 9, A. D. 1863.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the second day of March, A. D. 1863, came said plaintiff, by his attorneys, and filed in said clerk's office his declaration in said entitled cause; which said declaration is in the words and figures following, to wit:

Circuit court of the United States for the northern district of Illinois, March term, A. D. 1863.

William Barron, who is a citizen of the State of Vermont, plaintiff, complains of the Illinois Central Railroad Company, a body politic and corporate, created and existing by under the laws of the State of Illinois, and doing business in the State of Illinois, having their office and principal place of business in said State, defendants, who have been summoned to answer in a plea of trespass on the case—

For that whereas the said defendants, before and at the time of committing the grievance hereinafter mentioned, were owners and proprietors of a certain train of railway carriages for the carriage and conveyance of passengers from Hyde Parke station, in the town of Hyde Parke, in the
6 county of Cook, to the city of Chicago, in the district aforesaid, for hire and reward to the said defendant in that behalf, to wit, in the district aforesaid; and the said defendants being such owners and proprietors of said train as aforesaid, theretofore, to wit, on the eighth day of January, in the year of our Lord one thousand eight hundred and sixty-two, at said district, William T. Barron, who was the son of the plaintiff, at the special instance and request of the said defendant, became and was a passenger in one of the carriages composing said train, to be safely and securely carried and conveyed thereby on a certain journey, to wit, from Hyde Parke station aforesaid to the city of Chicago aforesaid, for a certain hire and reward to the said defendants in that behalf, and the said defendants then and

there received the said William T. Barron as such passenger as aforesaid, and thereupon it then and there became and was the duty of the said defendants to use due and proper care that the said William T. Barron should be safely and securely carried by and in said carriage on said journey from Hyde Park station aforesaid to the city of Chicago aforesaid. Yet the said defendants, not regarding their duty in that behalf, did not use due and proper care that the said William T. Barron should be safely and securely carried and conveyed by and in said carriage on the said journey from Hyde Park station aforesaid to the city of Chicago aforesaid, but wholly neglected so to do, and there so carelessly, negligently, and unskilfully man-
7 aged and conducted the said train of railway carriages, in one of which the said William T. Barron was then a passenger as aforesaid, that the said train, through the mere carelessness, negligence, and unskilfulness, and default of the said defendants and their servants, and without the negligence or default of the said William T. Barron, in that behalf was greatly injured, and the said carriage in which the said William T. Barron, who was a passenger as aforesaid, was driven into, broken to pieces, and destroyed by another train of railway carriages then and there running over and upon the same railway of the said defendants, by the permission and under the control and direction of the said defendants, whilst the said train of railway carriages, in one of which the said William T. Barron, who was then and there being carried as a passenger as aforesaid, was proceeding on and along the said railway of said defendants, on said journey from Hyde Park station aforesaid, and before the arrival thereof at the city of Chicago aforesaid, to wit, on the day and year aforesaid, at the district aforesaid, by reason whereof the said William T. Barron, without any negligence or default on his part, was then and there instantly killed.

And the plaintiff avers that he is the personal representative of the said William T. Barron; that the said William T. Barron left no widow, and that he is the father and next of kin to the said William T. Barron. Wherefore he says that he is injured, and hath sustained damage in the sum of five thousand dollars.

8 2. And whereas, also, heretofore, to wit, on the day and year aforesaid, at the district aforesaid, the said William T. Barron, at the special instance and request of the said defendants, became and was a passenger by a certain carriage forming a part of a certain other train of railway carriages used and employed by the said defendants for the carriage and conveyance of passengers for hire, then being on a journey on a certain railway of the said defendants, from Hyde Park station, in the town of Hyde Park, in the county of Cook, to the city of Chicago, in the district aforesaid, to be by the said defendants safely and securely carried and conveyed, for a certain hire and reward to them in that behalf, from Hyde Park station aforesaid to the city of Chicago aforesaid. And the said defendants were also then and there possessed of a certain other train of railway carriages then also journeying on and by the same railway of the said defendants, under the direction and control of the said defendant and their servants, and thereupon it became and was then and there the duty of the said defendants to use proper care that the said William T. Barron should be safely and securely carried and conveyed in and by the said carriage in which he was a passenger as aforesaid, from Hyde Park station aforesaid to the city of Chicago aforesaid.

Nevertheless, the defendants by their servants so carelessly, negligently, and unskilfully, and improperly behaved and conducted themselves in
9 and about the management, control, and direction of the said train, that the same, by and through the default, negligence, carelessness, and improper conduct of the said servants of the said defendants, and without any negligence or default on the part of the said William T. Barron,

collided and were driven together with great force and violence, by reason whereof the train of railway carriages in one of which the said William T. Barron was then and there being carried as a passenger aforesaid, was very much injured, and the said carriage in which he was was driven into, broken to pieces, and destroyed, by reason whereof the said William T. Barron was then and there instantly killed.

And the plaintiff avers that the said William T. Barron left no widow; that he is the father of the said William T. Barron, and the next of kin to him, and that he is the personal representative of the said William T. Barron.

And for that whereas, also, heretofore, to wit, on the day and year aforesaid, to wit, at the district aforesaid, the said William T. Barron, at the special instance and request of the said defendants, became and was a passenger by a certain other train of railway carriages, to be safely and securely carried and conveyed thereby on a certain journey, to wit, from Hyde Park station, in the town of Hyde Park, in said district, to the city of Chicago afore-
10 said, for certain reward to said defendants in that behalf, and thereupon it then and there became and was the duty of the said defendants to use due and proper care that the said William T. Barron should be safely and securely carried and conveyed by the said train on the said journey from Hyde Park station aforesaid, to the city of Chicago aforesaid. Yet the said defendants, not regarding their duty in this behalf, did not use due and proper care that the said William T. Barron should be safely and securely carried and conveyed by this train on the said journey from Hyde Park station aforesaid to the city of Chicago aforesaid, but wholly neglected so to do, and by reason thereof, afterwards, and whilst the said train of railway carriages, in one of which the said William T. Barron was a passenger, was proceeding on the said journey from Hyde Park station aforesaid, and before the arrival thereof at the city of Chicago aforesaid, to wit, on the day and year aforesaid, at the district aforesaid, the said train of railway carriages, in one of which the said William T. Barron was a passenger, was struck and driven into with great force and violence by another train of railway carriages then and there running on and over the railway of said defendants by the permission and under the control and direction of said defendants, by reason whereof the said first mentioned train was very much injured, and the said carriages in which the said William T. Barron
11 then was a passenger as aforesaid was driven into, broken to pieces, and destroyed, whereby the said William T. Barron was jamed, wounded, crushed, and thrown from the carriage in which he was journeying as aforesaid, without any negligence or default of his own, and then and there instantly killed.

And the plaintiff avers that the said William T. Barron left no widow; that he is father of the said William T. Barron, and next of kin to him, and that he is the personal representative of the said William T. Barron.

And whereas, also, the said defendants, before the committing of the grievances hereinafter next mentioned, were the owners and proprietors of a certain other train of railway carriages by them, the said defendants, used and employed for the carriage and conveyance of passengers at and for a certain hire and reward to them in that behalf, to wit, at the district aforesaid. And the said defendants being such owners and proprietors of said last-mentioned train of railway carriage as aforesaid, the said William T. Barron heretofore, to wit, on the day and year aforesaid, at the district aforesaid, at the special instance and request of the said defendants, became and was a passenger by one of said carriages of said train, to be safely and securely carried and conveyed thereby on a certain journey, to wit, from Hyde
12 Park station aforesaid to the city of Chicago aforesaid, for certain hire and reward to the said defendants in that behalf, and although

the said William T. Barron was then and there received by the said defendants as such passenger, by the said last-mentioned train as aforesaid, to be carried and conveyed thereby as aforesaid, yet the said defendants, not regarding their duty in that behalf, so carelessly, negligently, unskillfully, and improperly managed and conducted the said train and the carriage in which the said William T. Barron was a passenger as aforesaid, on the said journey from Hyde Park station aforesaid to the city of Chicago aforesaid, the said carriage in which the said William T. Barron was a passenger was, by and through the carelessness, and negligence, and improper conduct of the said defendants, smashed in, broken, and destroyed, with the said William T. Barron therein, by reason whereof the said William T. Barron was then and there instantly killed, without any negligence or default on his part.

And the plaintiff avers that the said William T. Barron left no widow; that he is father of the said William T. Barron; that he is next of kin to him, and that he is the personal representative of the said William T. Barron.

Wherefore the plaintiff says that he is injured, and has sustained damage in the sum of five thousand dollars, and therefore he sues.

13 CLARK, CORNELL & NORTON, *Att'ys for Pl'ff.*

Endorsed: Filed March 2d, 1863.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the fifth day of March, A. D. 1863, came the defendant, by its attorneys, and filed in said clerk's office its demurrer to declaration; which said demurrer is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

In the circuit court for said district, of the March term, A. D. 1863.

WILLIAM BARRON
vs.
ILLINOIS CENTRAL RAILROAD COMPANY. } Case.

And the said defendant, by McAllester, Jewett & Jackson, its attorneys, comes and defends the wrong and injury when, &c., and says that the said declaration, and each and every count thereof, and the matters therein contained in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his afore-
14 said action thereof against the said defendant, and that the said defendant is not bound by law to answer the same. And this the said defendant is ready to verify.

Wherefore, by reason of the insufficiency of the said declaration, and each and every count thereof in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against the said defendant, &c.

McALLESTER, JEWETT & JACKSON, *Att'ys for Def't.*

Endorsed: Filed March 5, 1863.

WM. H. BRADLEY, *Clk.*

Re-filed Oct. 13th, '63.

WM. H BRADLEY, *Clk.*

On this day, to wit, the twentieth day of June, in the adjourned May term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM BARRON
vs.
ILLINOIS CENTRAL RAILROAD CO. } Trespass on the case.

Now comes the plaintiff, by his attorney, and on motion leave is
15 given to file an amended declaration.

On this day, to wit, the seventeenth day of July, A. D. 1863, came said plaintiff, by his attorney, and filed in said clerk's office his amended declaration in said entitled cause; which amended declaration is in the words and figures following, to wit:

Amended declaration.

Circuit court of the United States for the northern district of Illinois, July term, 1863.

WILLIAM BARRON, exec.,
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY.

William Barron, executor of the last will and testament of William T. Baron, deceased, who is a citizen of the State of Vermont, plaintiff, complains of the Illinois Central Railroad Company, a body politic and corporate by and under the laws of the State of Illinois, having their office and principal place of business in said last-mentioned State, to wit, at the city of Chicago, therein, defendants, who have been summoned to answer in a plea of trespass on the case, for that whereas the said defendant, before and at the
16 time of committing the grievances hereinafter mentioned, were owners and proprietors of a certain train of railway carriages for the carriage and conveyance of passengers from Hyde Park station, in the town of Hyde Park, in the county of Cook, to the city of Chicago, in the State of Illinois and district aforesaid, for hire and reward to the said defendants in that behalf, to wit, in the district aforesaid; and the said defendants being such owners and proprietors of said train, theretofore, to wit, on the eighth day of January, A. D. 1862, at said district, William T. Baron, at the special instance and request of the said defendants, became and was a passenger in one of the carriages composing said train to be safely and securely carried and conveyed thereby on a certain journey, to wit, from Hyde Park station aforesaid to the city of Chicago aforesaid, for a certain hire and reward to the said defendants in that behalf. And the said defendants then and there received the said William T. Barron as such passenger as aforesaid, and thereupon it then and there became and was the duty of the said defendants to use due and proper care that the said William T. Barron should be safely and securely carried by and in said carriage on said journey from Hyde Park station aforesaid to the city of Chicago aforesaid. Yet the said defendants, not regarding their duty in that behalf did not use due and
17 proper care that the said William T. Barron should be safely and securely carried and conveyed by and in said carriage on the said journey from Hyde Park station aforesaid to the city of Chicago aforesaid, but wholly neglected so to do, and there so carelessly, negligently, and unskilfully managed and conducted the said train of railway carriages, in one of which the said William T. Barron was then a passenger as aforesaid, that the said train, through the mere carelessness, negligence, unskillfulness, and default of the said defendants and their servants, and without any negligence or default of the said William T. Barron in that behalf, was greatly injured, and the said carriage in which the said William T. Barron was a passenger as aforesaid was driven into, broken to pieces, and destroyed by another train of railway carriages then and there running over and upon the same railway of the said defendants by the permission and under the control and direction of the said defendants whilst the said train of railway carriages, in one of which the said William T. Barron, who was then and there being carried as a passenger as aforesaid, was proceeding on and along the said railway of the said defendants on said journey from Hyde Park station aforesaid and before the arrival thereof at the city of Chicago aforesaid, to wit,

on the day and year aforesaid, at the district aforesaid, by reason
18 whereof the said William T. Barron, without any negligence or default on his part, was then and there instantly killed.

And whereas, also, heretofore, to wit, on the day and year aforesaid, at the district aforesaid, the said William T. Barron, at the special instance and request of the said defendants, became and was a passenger by a certain carriage forming a part of a certain other train of railway carriages used and employed by the said defendants for the carriage and conveyance of passengers for hire, then being on a journey on a certain railway of the said defendants from Hyde Park station, in the town of Hyde Park, in the county of Cook, to the city of Chicago, in the district aforesaid, to be by the said defendants safely and securely carried and conveyed for certain hire and reward to them in that behalf from Hyde Park station aforesaid to the city of Chicago aforesaid.

And the said defendants were also then and there possessed of a certain other train of railway carriages then also journeying on and by the same railway of the said defendants, under the direction and control of the said defendants and their servants, and thereupon it became and was the duty of the said defendants to use proper care that the said William T. Barron should be safely and securely carried and conveyed in and by the said carriage in which he was a passenger as aforesaid from Hyde Park station afore-
19 said to the city of Chicago aforesaid. Nevertheless the defendants, by their servants, so carelessly, negligently, unskillfully, and improperly behaved and conducted themselves in and about the management, control, and direction of the said train that the same by and through the default, negligents, carelessness, and improper conduct of the said servants of the said defendants, and without any negligents or default on the part of the said William T. Barron, collided and were driven together with great force and violence by reason whereof the train of railway carriages, in one of which the said William T. Barron was then and there being carried as a passenger as aforesaid, was very much injured, and the said carriage in which he was was driven into, broken to pieces, and destroyed, by reason whereof the said William T. Barron was then and there instantly killed.

And for that whereas, also, heretofore, to wit, on the day and year aforesaid, to wit, at the district aforesaid, the said William T. Barron, at the special instance and request of the said defendants, became and was a passenger by a certain other train of railway carriages to be safely and securely carried and conveyed thereby on a certain journey, to wit, from Hyde Park station, in the town of Hyde Park, in said district, to the city of Chicago aforesaid, for certain reward to said defendant in that behalf, and
20 thereupon it then and there became and was the duty of said defendants to use due and proper care that the said William T. Barron should be safely and securely carried and conveyed by the said train on the said journey from Hyde Park station aforesaid to the city of Chicago aforesaid. Yet the said defendants, not regarding their duty in this behalf, did not use due and proper care that the said William T. Barron should be safely and securely carried and conveyed by said train on the said journey from Hyde Park station aforesaid to the city of Chicago aforesaid, but wholly neglected so to do, and by reason thereof afterwards and whilst the said train of railway carriages, in of which the said William T. Barron was a passenger, was struck and driven into with great force and violance by another train of railway carriage then and there running on and over the railway of the said defendants, by the permission and under the control and direction of said defendants, by reason whereof the said first-mentioned train was very much injured and the said carriage in which the William T. Barron then was a passenger as aforesaid was driven into, broken to pieces, and destroyed,

whereby the said William T. Barron was jamed, wounded, crushed, and thrown from the carriage in whidh he was journeying as aforesaid, without any negligence on his part or default of his own, was then and there instantly killed.

21 And whereas, also, the said defendants before the committing of the grievances hereinafter next mentioned were the owners and proprietors of a certain other train of railway carriages by them, the said defendants, used and employed for the carriage and conveyance of passengers at and for a certain price and reward to them in that behalf, to wit, at the district aforesaid; and the said defendants being such owners and proprietors of said last-mentioned train of railway carriages as aforesaid the said William T. Barron heretofore, to wit, on the day and year aforesaid, at the district aforesaid, at the special instance and request of the said defendants, became and was a passenger by one of said carriages of said train to be safely and securely carried and conveyed thereby on a certain journey, to wit, from Hyde Park station to the city of Chicago aforesaid, for certain hire and reward to the said defendant in that behalf. And although the said William T. Barron was then and there received by the said defendants as such passenger, by the said last-mentioned train as aforesaid, to be carried and conveyed thereby as aforesaid, yet the said defendants not regarding their duty in that behalf so carelessly, negligently, unskillfully, and improperly managed and conducted the said irain and the carriages in

22 which the said William T. Barron was a passenger as aforesaid on the said journey from Hyde Park station aforesaid to the city of Chicago aforesaid the said carriage in which the said William T. Barron was a passenger was, by and through the carelessness, negligence, and improper conduct of the said defendants, smashed in, broken, and destroyed with the said William T. Barron therein, by reason whereof the said William T. Barron was then and there instantly killed, without any negligence or default on his part.

And the plaintiff avers that the said William T. Barron, in his lifetime, possessed and exercised great industry, prudence, energy, skill, and good judgment in the management and control of his property and business affairs, by reason whereof he greatly augmented his estate and the profits thereof.

Wherefore the plaintiff says that by the death of the said William T. Barron as aforesaid he hath sustained damage in the sum of five thousand dollars.

And the plaintiff further avers that the said William T. Barron died testate, having made his will and testament, and that the plaintiff has been duly and legally appointed executor thereof, and brings into court his letters testamentary.

23 And the plaintiff further avers that the said William T. Barron left no widow nor children; that the plaintiff, the said William Barron, his father, Horace E. Barron, his brother, Charlotte A. Rogers, formerly Charlotte A. Barron, Mary L. Burbank, formerly Mary L. Barron, Elizabeth H. Beene, formerly Elizabeth H. Barron, his sisters, are the only surviving next of kin to him, the said William T. Barron, for whose use and benefit this suit is brought. And therefore he sues.

CLARK, CORNELL & NORTON,
Att'ys for Plaintiff.

Endorsed: Filed July 17th, 1863.

WM. H. BRADLEY, *Clerk.*

And afterwards, to wit on the 13th day of October, A. D. 1863, the def'ts, by their attorney, by leave of the court, refile their demurrer (heretofore filed

of date of March 5th, 1863) to the declaration of the plaintiff as amended; which said demurrer has been heretofore copied into this transcript.

On this day, to wit, the thirteenth day of October, in the adjourned October term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause in the following entry, to wit:

WILLIAM BARRON
v.
ILLINOIS CENTRAL RAILROAD COMPANY. } Trespass on the case.

24 Now comes on to be heard the demurrer of the defendant to the original and amended declaration of the plaintiff, which after argument is taken under advisement.

On this day, to wit, the nineteenth day of October, in the adjourned October term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM BARRON
v.
THE ILLINOIS CENTRAL RAILROAD. } Trespass on the case.

The court having considered and being fully advised on the demurrer of the defendant to the original and mended declaration of the plaintiff, overrules the same.

On this day, to wit, the twentieth day of October, A. D. 1863, came said defendant by McAllester, Jewett & Jackson, and by leave of the court withdraw their demurrer and file their plea in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

In the circuit court of the United States for said northern district of
25 Illinois, October term, A. D. 1863.

WILLIAM BARRON, executor, &c.,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY. }

And the said defendant, by McAllister, Jewett & Jackson, its attorneys, come and defends the wrong and injury when, &c., and says that it is not guilty of the said several supposed grievances above laid to its charge, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against it. And of this the said defendant puts itself upon the country, &c.

McALLESTER, JEWETT & JACKSON,
Att'ys for Def't.

Endorsed: Filed Oct 20th, 1863.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the seventh day of July, in the July term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM BARRON
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Trespass on the case.

Now come the parties, by their attorneys, and upon issue joined there-
26 upon come a jury of good and lawful men, to wit, L. K. Osborn, A. J. Hayward, Thomas McNulty, James V. Gale, Louis B. Kelly, John E.

Whiting, Thomas Doig, Welland Wood, Charles W. Murtfield, D. A. Holmes, Robert Sheppard and William L. Felton, who are all duly elected, tried, and sworn to well and truly try said issue, and after hearing a part of the evidence, the hour of adjournment having arrived, the further trial is postponed until to-morrow morning.

On this day, to wit, the eighth day of July, in the July term, A. D. 1864, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

WILLIAM BARRON
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY.

Now come again the parties, by their attorneys, and come also the jury in this behalf empannelled and sworn, and after hearing the concluding evidence and a part of the arguments of counsel until the hour of adjournment, without concluding the same, the further hearing is postponed until to-morrow morning.

27 On this day, to wit, the ninth day of July, in the July term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM BARRON
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Trespass on the case.

Now come again the parties, by their attorneys, and come also the jury in this behalf empannelled and sworn, and after hearing the concluding arguments of counsel and receiving instructions from the court, the jury retire to consider of their verdict, and after a short absence the jury return into court the following verdict, to wit:

We, the jury, find the defendant guilty and assess the plaintiff's damages to the sum of three thousand seven hundred and fifty dollars, and the defendant by its attorneys moves the court for a new trial herein.

On this day, to wit, the ninth day of July, A. D. 1864, came said defendant, by its attorneys, and filed in said clerk's office its bill of exceptions in said entitled cause; which said bill of exceptions is in the words and figures following, to wit:

28 Circuit court of the United States for the northern district of Illinois.

WILLIAM BARRON, executor of the estate of William T. Barron, deceased,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY.

Be it remembered, that upon the trial of this cause, on the 7th day of July, A. D. 1864, that being one of the days of the July term, A. D. 1864, of said court, before the honorable the circuit court of the United States for the northern district of Illinois and a jury, the plaintiff, to sustain the issues on his part, offered in evidence and read to the jury letters testamentary upon the estate of William T. Barron, deceased, issued to the said plaintiff and bearing date the 18th day of January, A. D. 1862, which being read, the defendant, by its counsel, moved the court to dismiss said cause for want of jurisdiction, which motion was overruled by the said court, and to the decision of said court in overruling said motion the defendant, by its counsel, then and there excepted.

The plaintiff, further to sustain the issue on his part, then presented to the jury, by testimony of witnesses, evidence tending to show that William T. Barron, at the time of his death, and for a considerable time prior thereto, resided at Hyde Park, a town on the railroad of the defendant, about six miles south of the city of Chicago; that he did business in said city,
29 and that in going to and from Chicago he was a frequent passenger on an accommodation train of the defendant known as the "Hyde Park train," running between Chicago and a station called Woodlawn, south of Hyde Park and about $8\frac{3}{4}$ miles from Chicago; that on the morning of the 8th day of January, 1862, said William T. Barron was a passenger on said train going from Hyde Park to Chicago; that in addition to the passenger and baggage cars, there were in said train on that morning three cars loaded with wood; that the morning was rainy and the tract was covered with sleet and ice; that said train left Woodlawn two or three minutes behind its regular time as fixed by the time table then in force regulating the running of trains; that it took on the wood cars at a place called Woodpile, between Woodlawn and Hyde Park, which detained the train from five to seven minutes; and that at Hyde Park, where said Barron got aboard the train, and at Kenwood, about three fourths of a mile north of Hyde Park, said train was from seven to ten minutes behind its time as specified on said time card; that said time card had been in force about 30 days and was in the hands of all persons having charge of trains upon said road; that the Cincinnati express train, managed and operated by the Michigan Central Railroad Company, was in January, 1862, and for a long time prior thereto had been, a regular train upon the road of the defendant, between Calumet, a sta-
30 tion about six miles south of Woodlawn, and Chicago; that at the time said Hyde Park train left Woodlawn said Cincinnati express train had been due at that place for nearly an hour, and was so far behind time as to have become what is termed a "wild train" and to have lost its precedence over the Hyde Park train on the track between Woodlawn and Chicago, and that the Hyde Park train, when it left Woodlawn on the morning of January 8th, 1862, had the right of way from that station to Chicago; that the Hyde Park train was a slow train, occupying 35 minutes between Woodlawn and Chicago and stopping at all intermediate stations for passengers, and that its card time for leaving Woodlawn was 25 minutes past 7 o'clock in the morning; that it did not, on the morning of the 8th of January aforesaid, absolutely stop at Kenwood station, but only checked its speed sufficiently to enable a few gentlemen waiting there to get on board, and then immediately commenced increasing its speed; that the track from Kenwood south toward Hyde Park was perfectly straight for a distance of 1,200 or 1,500 feet, at which point was the commencement of a curve reaching beyond Hyde Park; that as the Hyde Park train moved away from Kenwood station the Cincinnati express train was observed by some of the passengers across the curve in the vicinity of Hyde Park and about $\frac{3}{4}$ of a mile distant, coming at a very high rate of speed; that the engine on the Hyde Park train was a light engine, such as was ordinarily used on that train,
31 and that in consequence of the icy condition of the track, it was impossible to get the train in rapid motion immediately; that as the Cincinnati express train struck the straight track south of Kenwood it was observed by the conductor of the Hyde Park train, who immediately warned the passengers to get off the train; that there were from 20 to 30 passengers in the passenger car; that William T. Barron, with the others, attempted to leave the car, and whilst in the act of getting off the Cincinnati express train ran into the rear of the Hyde Park train with such violence as to cause the passenger car to split open and shut by the baggage car in front of it, and that said Barron was caught between the two cars and instantly killed;

that the passenger car was very much torn to pieces, and several other persons besides said Barron were seriously injured, one of whom afterwards died of the injuries received by him.

The plaintiff also presented to the jury evidence tending to show that there was no bell rope in use upon the Hyde Park train that morning, and that under certain circumstances, when a train is considerably behind its regular time, it is its duty to protect its rear by sending back a flag to warn other trains which may be approaching it on the same track from behind; that no flag was sent back from said Hyde Park train, or other warning given on this occasion;

32 that the engine-house of the defendant was between the depot in Chicago and Kenwood when the collision took place, about 2½ miles from the former and four miles from the latter, and that trains are considered safe when they arrive at the engine-house, for the reason that the rate of speed from there to the depot is prescribed and it is a very slow rate; that the Hyde Park train when in motion might run from 20 to 25 miles an hour, and perhaps more, but that it was only a short distance before it had to stop; that it could make fast time after it got started; that the Hyde Park train left the depot at Chicago in the morning daily for Woodlawn for the purpose of bringing in passengers accustomed to pass upon it; that in going to Woodlawn it usually met the Cincinnati express train coming in; that it had not met the Cincinnati express that morning, and that then having the direction of it, knew that the Cincinnati train had not passed and was somewhere in their rear; that the Cincinnati express train was a swifter train than the Illinois Central and was three fourths of an hour behind time on the morning of the collision.

The plaintiff presented to the jury further evidence tending to show that William T. Barron, at the time of his death, was about 35 years of age; that he had never been married and left no widow or children; that the plaintiff was his farther and the other persons named in the declaration were his

33 brothers and sisters who survived him and are still living; that at one time, several years before his death, his sister, Mrs. Rogers, and her husband, and a younger unmarried sister were living in Chicago, in a house rented and furnished by said William T. Barron, he residing with them, but that upon the death of Mr. Rogers, which occurred three or four years prior to the death of Mr. Barron, Mrs. Rogers returned to Vermont and has ever since resided with the plaintiff, her father; that the younger sister died a considerable time before the death of said Barron, but continued up to the time of her decease to reside in Chicago and receive support and assistance to some extent from said Barron; that said Barron was an attorney by profession, but for four years prior to his death he had been judge of the county court of Cook County, Illinois, his term of office having then recently expired; that he had resumed, or was about to resume, the practice of his profession, with a fair promise of doing as well as before he was elected judge, and that his professional income prior to his election as such judge had been about three thousand dollars per annum.

The defendant, to sustain the issue on its part by the cross-examination of the witnesses introduced by the plaintiff, produced before the jury evidence tending to show that the railroad track between Calumet and Chicago, now owned by the defendant, and on which said collision occurred, was originally

34 constructed by the Michigan Central Railroad Company, and that by arrangement and agreement between the two companies, the Michigan Central Railroad Company had the right in perpetuity of running its trains over said road; that the time tables or time cards regulating the running of trains over said road were arranged by and for the accommodation of both companies, although issued in the name of the defendant alone; that the time for the running of the trains of both companies was correctly

set down in the time card then in use, which was in the hands of the agents and employees of both companies; that the trains of the Michigan Central RR. Co. upon that part of the road, as well as elsewhere, were managed and operated exclusively by the officers and agents of the Michigan Central RR. Co.; that the Cincinnati express train was one of the regular trains of the Michigan Central RR. Co., and that the men in charge of it were the employees of that company and in no way subject to the direction or control of the defendant.

[*Note by the court.*—It was proved and admitted on the trial that the railroad from Hyde Park to Chicago, on which the collision occurred, was constructed under the charter of the defendant and by its authority; that all trains, Michigan Central and others, which run there were run by the consent and agreement and under contract with the defendant, and that no trains could run there without the consent of defendant.]

That from Woodlawn south to Calumet, a distance of about six
35 miles, the railroad track was true and straight, and that when the Hyde Park train left Woodlawn on the morning of the 8th of January, 1862, the Cincinnati express train was not in sight from that station; that it came up shortly afterwards and passed Woodlawn and Hyde Park stations at a very high rate of speed, and apparently made no effort to avoid the collision; that the collision occurred about 20 minutes before 8 o'clock and about 300 feet north of the Kenwood station; that there was abundant time and space to have brought said train to a stop if it had been properly managed between the head of the curve, 1,200 or 1,500 feet south of Kenwood, and the place of the collision, and that the Hyde Park train was in plain sight from the said Cincinnati express train as soon as the latter train reached the head of said curve; that upon the face of the time card before referred to, then in force, there was printed in italics, with marks calling particular attention to the same, the following direction, to wit: "Look out for the Hyde Park train at all places between the N. RR. crossing and Chicago;" that the place designated in said direction as the "N. RR. crossing" was about two miles south of Woodlawn; that situated as the Hyde Park train was, it was not its duty to protect it nor by sending back a flag or otherwise, and that the Cincinnati express train, when it came in sight, was running, and continued to run, at so high a rate of speed that it was impossible
36 for the Hyde Park train to get out of its way or to avoid the collision; that although the latter train was a few minutes later than usual at Kenwood, still it was then running on the time allowed to it between Woodlawn and Chicago, and could have reached Chicago at its regular time but for the collision, and that by the time card no particular time was fixed for arriving at or leaving the stations between Hyde Park and the place called the "Car Works," about 3 miles north of Kenwood, nor were there intermediate stations mentioned on the time card; that it was a usual thing to attach wood cars to that train, sometimes every day and sometimes twice or three times a week; that the train was always a light one, and was so on this occasion, and that the engine was heavy enough for said train and worked well and was in good order.

The defendant also presented the jury evidence tending to show that said William T. Barron left an estate worth from $30,000 to $40,000.

The foregoing is the substance of all the evidence introduced in the trial of said cause; and the testimony being closed the defendant, by its counsil, asked the court to charge the jury as follows:

1st. That the statute under which this action is brought intends to give no damages, for the injury received by the deceased, but refers wholly to the pecuniary loss which the next of kin may be found to have sus-
37 tained. The statute makes their pecuniary loss the sole measure of damages, and the satisfaction of that loss is therefore the sole pur-

pose for which an action of this kind can be instituted, there being nothing to be allowed for berevement, and that it is incumbent on the plaintiff, before he can recover anything more than nominal damages, to show by the evidence that there are persons in existance entitled to claim the indemnity given by the law, and that they have sustained a pecuniary loss justifying their claim.

But the court refused so to charge the jury; and to said refusal of the court the defendant, by its counsel, then and there excepted.

The defendant, by its counsil, further asked the court to charge the jury as follows:

2d. To entitle the plaintiff to recover in this action anything beyond merely nominal damages, the parties for whose benefit the action is brought must be shown by the evidence to have had at the time of the death of William T. Barron a legal interest in his life, and that by his death they have been deprived of something to which they had a legal right.

But the court refused so to charge the jury; and to the said refusal of the court the defendant, by its counsil, then and there excepted.

38 The defendant, by its counsil, asked the court further to charge the jury as follows:

3d. That if the jury believe from the evidence that the persons for whose benefit this action is brought have received in consequence of the death of said William T. Barron, and out of this estate inherited by them from him, a pecuniary benefit greater than the maximum amount of damages which could, under any circumstances, be recovered in this action, then, as a matter of law, they have by the death of said Barron sustained no actual pecuniary injury for which compensation can be recovered in this action.

But the court refused so to charge the jury; and to such refusal of the court the defendant, by its counsel, then and there excepted.

The defendant, by its counsel, asked the court further to charge the jury as follows:

4th. If the jury believe from the evidence that the collision of the two trains of cars in question, and the death of William T. Barron resulting therefrom, was occasioned solely by the carelessness or default of the persons in charge of the Cincinnati express train, and that the defendant had no authority or control over such persons, but that they were wholly under the authority and direction of the Michigan Central Railroad Company,

39 then the defendant is not liable in this action, even for nominal damages.

But the court refused so to charge the jury; and to such refusal of the court the defendant, by its counsil, then and there excepted.

And thereupon the court charged the jury substantially as follows, upon its own motion, declining to give the instructions in the form as asked by defendant:

GENTLEMEN OF THE JURY: This a suit brought to recover damages for the death of William Barron, who was killed on the 8th of January, 1862, between Hyde Park and Chicago, while a passenger for hire on the cars of the Illinois Central railroad.

By the common law this action could not be sustained. In 1853 a statute was passed in this State giving a right of action wherever death is caused by the act of a person or corporation, where, if death had not ensued, the party injured would have been entitled to sue. The act also provides that the action shall be brought by the personal representatives of the deceased, and the amount recovered shall be for the exclusive benefit of the widow and next of kin, and that the jury may give such damages as they shall

deem a just and fair compensation, with reference to the pecuniary
40 injuries resulting from such death, to the wife and next of kin, not exceeding the sum of $5,000

Barron was never married, and it is contended by the defendant that the next of kin, being his father, brothers, and sisters, had no claim on him for support or services, and therefore there could have been no pecuniary loss to them by his death.

We cannot adopt this construction of the law, but charge you that there can be a recovery if the deceased left no kin surviving him who had any legal claim on him if living for support.

The cause of action is given in the first section of the act in clear and unmistakable terms. If the injured party, by the common law, had a right to sue if he had lived, then if he dies his representatives can bring an action.

Many individuals who lose their lives by the fault of persons and corporations are of age, unmarried, and have no next of kin dependent on them for support. We cannot suppose that the statute intended to give the representatives of such persons the right to sue in one section and make that right nugatory in the second section, by depriving them of all damages.

The policy of the law was evidently to make common carriers more circumspect in regard to the lives entrusted to their care. They were responsible at common law if through their fault broken limbs were the result, but escaped responsibility if death ensued. To remedy this evil
41 and provide a continuing responsibility, was, in the opinion of the court, the object of the law.

We do not think it requisite to prove present actual pecuniary loss. It can rarely be done. The attempt to do it would substitute the opinion of witnesses for the conclusions of the jury. The facts proved will enable the jury to decide on the proper measure of responsibility. Some cases are harder than others, and the law intends that the jury shall discriminate in different cases. There is no fixed measure of damages, and no artificial rule by which the damages in a given case can be computed.

The jury are not to take in consideration the pain suffered by the deceased, or the wounded feelings of surviving relatives, and no damages are to be given by way of punishment.

In this case the next of kin are the parties who were interested in the life of the deceased. They were interested in the further accumulations which he might have added to his estate, and which might hereafter descend to them.

The jury have a right, in estimating the amount of pecuniary injury, to take into consideration all the circumstances attending the death of Barron—the relations between him and his next of kin, the amount of his property, the character of his business, and the prospective increase in wealth likely to accrue to a man of his age with the business and means which he had.

42 There is a possibility in the chances of business that Barron's estate might have decreased rather than increased, and this possibility the jury may consider. The jury also have a right to take into consideration the contingency that he might have married and his property descended in another channel.

And there may be other circumstances which might affect the question of pecuniary loss, which it is difficult for the court to particularize, but which will occur to you. The intention of the statute was to give a compensation for the pecuniary loss which the widow (if any) or the next of kin might sustain by the death of the party; and the jury are to determine, as men of experience and observation, from the proof what that loss is. In

order to render a verdict for the plaintiff it is necessary that the defendant should have been in fault.

The Illinois Central Railroad Company engaged to carry Judge Barron safely from Hyde Park to Chicago, and as a common carrier was bound to the most exact care and diligence required for the safety of passengers. The facts in the case are few and uncontradicted. On the morning of the 8th of January, 1862, Judge Barron was a passenger from Hyde Park to Chicago. The train was from seven to ten minutes behind time, and the track was slippery. By contract between the Michigan Central and Illinois Central Companies, the cars of the former were permitted to use the
43 track of the latter as far as Calumet. Proper time tables were arranged. The Cincinnati express of the Michigan Central, by these time tables, should have passed Hyde Park at least thirty minutes in advance of the train of the Illinois Central Railroad. On the morning of the 8th of January the Cincinnati express train was behind time and collided with the Illinois Central train at Kenwood, and was the immediate cause of the disaster. It is argued that the Cincinnati train caused the death of Barron, and that therefore the Illinois Central is not liable. The jury may believe from the evidence that the Cincinnati train was chiefly in fault, and that without its agency the calamity would not have happened. Yet if they also believe from the evidence that the misconduct or negligence of those in charge of the Illinois Central train contributed to the disaster, then the defendant was in fault, and the plaintiff is entitled to recover.

It is not a question which train was mostly in fault, but whether the train of the defendant was in fault at all. It is for the jury to say from the evidence whether the employees of the Illinois Central road used the necessary degree of care and diligence in the management of their train on that morning. Their train was behind time; the track was slippery, and it was known to them that an express train was liable to come up at any minute.
44 Should they not have indicated by flagging or in some other way that they were using the road? Can the jury say, if this had been done, that this accident would have occurred? If the proper degree of diligence did not require flagging, and if being out of time it did not contribute to the accident, then the Illinois Central train was not in fault. And the court would further instruct you, gentlemen, that if you shall find that the death was caused by the joint fault of those who had the management of the Michigan Central and Illinois Central trains, then the defendant is liable in this action; or if you shall believe from the evidence that the Michigan Central train was running on the road of the defendant by virtue of a contract with it, and that the train was under the sole management of the agents of the Michigan Central road, and that the death was caused entirely by their fault, then under the conceded facts of this case the defendant would still be responsible.

We understand the road on which the accident occurred belonged to the defendants, and by its charter was under its sole control to carry passengers and property, and if it allowed the trains of the Michigan Central to run over it under the management of the agents of the Michigan Central, it should be done in such a manner as not to interfere with the safety of the passengers of the defendant, and as to such passengers the fault of
45 the Michigan Central road in running their train is the fault of the defendant.

And to that part of the said charge of the court wherein the jury were instructed that a recovery could be had if the deceased left no kin surviving him who had any legal claim on him, if living, for support, and embraced in the following language of said charge, to wit: "Barron was never married, and it is contended by the defendant that the next of kin being his father,

brothers and sisters had no claim on him for support or services, and therefore there could have been no pecuniary loss to them by his death. We cannot adopt this construction of the law, but charge you that there can be a recovery if the deceased left no kin surviving him who had any legal claim on him, if living, for support," the defendant, by its counsel, then and there excepted.

And also to that part of the charge of said court wherein the jury were instructed as follows: "Many individuals who lose their lives by the fault of persons and corporations are of age, unmarried, and have no next of kin dependent on them for support. We cannot suppose that the statute intended to give the representatives of such persons the right to sue
46 in one section, and make that right nugatory in the second section by depriving them of all damages. The policy of the law was evidently to make common carriers more circumspect in regard to the lives entrusted to their care. They were responsible at common law, if through their fault broken limbs were the result, but escaped responsibility if death ensued. To remedy this evil and provide a continuing responsibility was, in the opinion of the court, the object of the law," the defendant, by its counsil, then and there excepted.

And also to that part of said charge respecting the proof of damages in actions of this kind and embraced in the following language of said charge, to wit: "We do not think it requisite to prove present actual pecuniary loss. It can rarely be done. The attempt to do it would substitute the opinions of witnesses for the conclusions of the jury. The facts proved will enable the jury to decide on the proper measure of responsibility. Some cases are harder than others, and the law intends that the jury shall discriminate in different cases. There is no fixed measure of damages, and no artificial rule by which the damages in a given case can be computed," the defendant, by its counsil, then and there excepted.

And also to that part of the charge of said court embraced in fol-
47 lowing language, to wit: "In this case the next of kin are the parties who were interested in the life of the deceased. They were interested in the further accumulations which he might have added to his estate, and which might hereafter decend to them;" and also to that part of said charge wherein the jury was instructed as follows: "The jury have a right in estimating the amount of pecuniary injury to take into consideration all the circumstances attending the death of Barron, the relations between him and his next of kin, the amount of his property, the character of his business, and the prospective increase in wealth likely to accrue to a man of his age with the business and means which he had," the defendant, by its counsil, then and there excepted.

And also to that part of said charge wherein the jury were instructed as follows: "There is a possibility in the chances of business that Barron's estate might have decreased rather than increased, and this possibility the jury may consider. The jury also have a right to take into consideration the contingency that he might have married and his property descended in
48 another channel," the defendant, by its counsil, then and there excepted.

And also to that part of said charge wherein the jury were instructed in respect to the liability of the defendant as follows, to wit: "Or if you shall believe from the evidence that the Michigan Central train was running on the road of the defendant by virtue of a contract with it, and that the train was under the sole management of the agents of the Michigan Central road and that the death was caused entirely by their fault, then under the conceded facts of this case the defendant would still be responsible," the defendant, by its counsil, then and there excepted.

And forasmuch as the said several proceedings aforesaid and the rulings and divisions, and the charge of said court and the exceptions of the defendant thereto do not appear of record in said cause, the said defendant has prepared and presented to said court this its bill of exceptions, and prays that the same may be signed and sealed by the said court, which is accordingly done this 25th day of July, A. D. 1864.

DAVID DAVIS. [SEAL.]
THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed July 9th, 1864.

WM. H. BRADLEY, *Clk.*

49 On this day, to wit, the twenty-fifth day of July, in the July term, A. D. 1864, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM BARRON
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } Trespass on the case.

Now come the parties, by their attorneys, and the plaintiff's attorney calls up the motion of the defendant heretofore entered herein for a new trial of this cause, which motion is overruled by the court.

It is thereupon considered and adjudged by the court that the said plaintiff do have and recover of and from the said defendant the said sum of three thousand seven hundred and fifty dollars, his damages so as aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, amounting to the sum of forty-two dollars and ninety-one cents, and that he have execution therefor.

50 On this day, to wit, the twenty-eighth day of July, A. D. 1864, came said defendant, by its attorneys, and filed in said clerk's office its appeal bond in said entitled cause; which said bond is in the words and figures following, to wit:

Supreme Court of the United States.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
WILLIAM BARRON, executor of the last will and testament of William T. Barron, dec'd. } In error.

Know all men by these presents that the Illinois Central Railroad Company, John M. Duglas, and William R. Arther are held and firmly bound unto the above-named William Barron, executor of the last will and testament of William T. Barron, deceased, in the penal sum of five thousand dollars, lawful money of the United States, to be paid to the said William Barron, executor as aforesaid, to which payment, well and truly to be made, the said Illinois Central Railroad Company binds itself and its successors, and the said John M. Duglas and William R. Arther bind themselves, their heirs, executors, and administrators, jointly and severally, firmly by

51 these presents. In witness whereof, the said Illinois Central Railroad Company has caused these presents to be executed in its name by John M. Duglas, its vice-president, and its corporate seal to be hereto affixed, and the said John M. Duglas and William R. Arthur have hereunto set their hands and seals this 26th day of July, A. D. 1864.

Whereas the above-named Illinois Central Railroad Company has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled cause by the circuit court of the United States for the eighth judicial circuit and northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-

named Illinois Central Railroad Company shall prosecute its said writ of error to effect, and answer all damages and costs if he shall fail to make good its plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

The Illinois Central Railroad Company by—

J. M. DOUGLAS, *Vice-President.* [SEAL.]
JOHN M. DOUGLAS. [SEAL.]
W. R. ARTHUR. [SEAL.]

Approved.

THOMAS DRUMMOND.

Endorsed: Filed July 28th, 1864.

WM. H. BRADLEY, *Clk.*

52 On this day, to wit, the 5th day of December, A. D. 1864, came said parties, by their attorneys, and filed in said clerk's office their stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

The Supreme Court of the United States, of the December term, A. D. 1864.

ILLINOIS CENTRAL RAILROAD COMPANY *vs.* WILLIAM BARRON, executor of the last will, &c., of William T. Barron, deceased.	Error to the circuit court of the United States for northern district of Illinois.

It is hereby stipulated and agreed that the record in the above-entitled cause may be filed in the Supreme Court of the United States, at the December term, A. D. 1864, thereof, at any time on or before the 16th day of December, A. D. 1864, with the same force and effect as though filed within the first six days of said term, under the rule of said court; and that this stipulation may be incorporated into and made part of the record in said cause.

Dated at Chicago, December 5th, 1864.

McALLESTER, JEWETT & JACKSON,
Att'ys for Pl'ff in Error.
CLARK, CORNELL & NORTON,
Att'ys for Defen't in Error.

Endorsed: Filed Dec. 5th, 1864.

WM. H. BRADLEY, *Clk.*

53 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H Bradley, clerk of the circuit court of the United States within and for said northern district of Illinois, do hereby certify the foregoing transcript to be a true, full, and perfect copy from the records of all the proceedings which have been had in said court in said cause of William Barron, executor of the estate of William T. Barron, deceased, against the Illinois Central Railroad Company, as the same now remains in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said northern district, this seventh day of December, A. D. 1864.

[SEAL.] WILLIAM H. BRADLEY, *Clerk.*

54 UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judg-

ment in a plea, which is in the said court before you, between William Barron, and against the Illinois Central Railroad Company, a manifest error hath happened, to the great damage of the said the Illinois Central Railroad Company, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and pro-
55 ceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and sixty-fifth, and of our independence the eighty-ninth year.

WM. H. BRADLEY, *Clerk.*

56 UNITED STATES OF AMERICA, *ss:*

To William Barron, executor of the last will and testament of William T. Barron, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eighth circuit and northern district of Illinois, wherein the Illinois Central Railroad Company is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable David Davis, presiding judge of the said 8th judicial circuit and northern district of Illinois, this 28th day of July, A. D. 1864.

D. DAVIS.

We do hereby acknowledge and accept due service of the above and foregoing citation, and the delivery of a true and correct copy thereof to us, this 30th day of July, A. D. 1864.

CLARK, CORNELL & NORTON, *Att'ys for Pl'ff.*

58 Supreme Court of the United States of America.

THE ILLINOIS CENTRAL RAILROAD COMPANY, plaintiffs in error, *ag'st* WILLIAM BARRON, executor, &c., defendant in error.	In error from the circuit court of the United States for the northern district of Illinois.

Afterwards, to wit, of the sixteenth day of December, in the term of December, 1864, before the justices of the said Supreme Court of the United States of America, at the Capitol, in the city of Washington, comes the plaintiff in error by McAlester, Jewett & Jackson, its attorneys, and says that in the record and proceedings aforesaid, and also in the giving the judgment, there is manifest error in this, that the declaration aforesaid as the same was amended, and the matters therein contained are not sufficient in law for the said defendant in error to have or maintain his aforesaid action thereof against the plaintiff in error; and also there is error in this, that the judgment aforesaid by the record aforesaid appears to have been given for the

said defendant in error against the said plaintiff in error, whereas by
59 the law of the land the said judgment ought to have been given for the plaintiff in error against the defendant in error; and the plaintiff in error prays that the judgment aforesaid for the error aforesaid, and for other errors in the said record and proceedings may be reversed, annulled, and altogether holden for naught, and that it may be restored to all things which he hath lost by occasion of the said judgment, &c.

McALESTER, JEWETT & JACKSON,
Attorneys for Plaintiff in Error.

Filed 16 December, 1864.

SUPREME COURT

OF THE UNITED STATES.

THE ILLINOIS CENTRAL RAILROAD COMPANY,
Plaintiff in Error,

VS.

WILLIAM BARRON, Defendant.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

ARGUMENT FOR THE DEFENDANT.

W. CRAVENS & CO. Printers 140 South Water St.

ERROR.

IN THE

SUPREME COURT of THE UNITED STATES.

THE

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff.

VS.

WILLIAM BARRON, Defendant in Error.

ARGUMENT FOR DEFENDANT IN ERROR.

The objections raised by the plaintiff in error to a recovery, will be found to be embodied in the following propositions:

I.

No recovery can be had except by those who have a legal claim for support.

II.

No recovery can be had in this case because the plaintiffs gain more by the death than the maximum of damages.

III.

No recovery can be had if the colliding train was the most or chiefly to blame.

IV.

No recovery can be had unless there was a present actual pecuniary loss.

It is believed that the foregoing propositions substantially cover the alleged errors:

The attention of the Court and jury which tried the case was in great measure engrossed in considering the question of *negligence*. That question cannot rise here save in connection with the motion for a new trial; and the overruling of that motion will hardly be pressed here as error, because it is manifest that there was evidence tending to prove negligence; and as to the weight and effect of that evidence, the jury will so far be allowed to be the judges, that this Court will not be likely to say that the Court which tried the cause erred in over-ruling the motion.

1. The action in this case is given by the statute of the State, and is as follows: "Be it enacted, That whenever the death of a "person shall be caused by the wrongful act, neglect or default, "and the act, neglect or default, is such as would, if death had not "ensued, have entitled the party injured to maintain an action and "recover damages in respect thereof, then, and in every such case, "the person who, or company or corporation which would have "been liable if death had not ensued, shall be liable to an action "for damages notwithstanding the death of the person injured, and "although the death shall have been caused under such circumstan-"ces as amount to *felony*."

2. "Every such action shall be brought by and in the name of "the personal representatives of such deceased person, and the "amount recovered in every such action shall be for the exclusive "benefit of the widow and next of kin of such deceased person, "and shall be distributed to such widow and next of kin, in the "proportion provided by law, in relation to the distribution of per-"sonal property left by persons dying intestate: and in every such "action the jury may give such damages as they shall deem a fair "and just compensation with reference to the pecuniary injuries "resulting from such death, to the wife and next of kin of such "deceased person, not exceeding the sum of five thousand dollars. "Provided, that every such action shall be commenced within two "years after the death of such person."

3. "This act shall take effect immediately."

The foregoing sections comprise the whole act; and the object in bringing the case into this court is, to obtain a correct and authoritative construction of the act. In giving this construction, the difficulty will be much lessened by keeping in mind the leading feature of the act.

By the law as it was, injury to the person might be compensated in damages if it was less than fatal: if death resulted, no action for damages would lie. There was a remedy for the *lesser* evil, but none for the greater. The object of the statute clearly was to declare that a provision of law so restricted, so unjust, and so unreasonable should no longer exist. The statute embraces no new idea or theory in reference to damages. It merely extends the right of action for the purpose of securing compensation for the same kind of injuries, and imposing penalties for the same character of negligence; and to this all the provisions of the statutes look.

The plaintiffs in error seem to plant themselves upon this provision in the 2d section—"and in every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries resulting from such death to the wife and next of kin, &c." But if the action were at common law for injuries to the person, would not the rule as to damages be precisely the same? If it would, then the statute introduces no new rule, and damages would be given in the case of death upon the same principle, and for the same reasons as in case of injuries to the person only. But it has never been pretended in any case, nor is it in this, that had William T. Barron been injured to any extent short of his life, pecuniary damages might not have been adjudged to him, though he was a man of wealth and leisure, and not dependent even upon the improvement of his estate for the *necessaries* or the *luxuries* of life. It would not be said that he had suffered no pecuniary injury because of no such dependence.

The statute gives damages to the next of kin. What damages? Damages of the same kind and for the same reasons as in case of injury to the person. Damages not dependent upon the necessities of the individual, but damages made up of all the facts and circumstances which would naturally tend to prevent the accumulation of his estate, and deprive the individual of the means of doing better

for his next of kin than otherwise he might do, and in presumption of law would do.

Counsel for the defendant below took the distinction in the charges which they asked the court to give, between substantial and nominal damages. Is there anything in the act itself to warrant any such distinction? The language of the act is, "in every such case the "jury may give such damages as they shall deem a fair and just "compensation." Is the court to presume that mere nominal damages would, in any case, be a fair and just compensation in so far that it might, as a matter of law, instruct the jury that they could give no more? If not, then the jury are the judges as to what a fair and just compensation is.

Can it be inferred from the language of the act that the case is destitute of merits because the next of kin have no legal claim for support? If this were so, then the *children* of a father killed could not have the benefit of the action if they had passed their majority, and his guardianship and tutelage; and especially if they had separate estates, and were better able to support themselves than the father was to support them: for, in such case, there would be no legal claim for support. The next of kin is a comprehensive term, and must often include those who have no claim for support, and stand in distant relationship to the individual.

Thus far I have endeavored to show that a recovery is not to be predicated upon the idea of a legal claim for support, by showing that the action given by the statute is of the same nature as that given by the common law for mere injuries to the person, and is to be governed by the same reasons; that pecuniary injuries result in both cases in kind, though they may not in degree. And whether the damages recoverable go to those who have a claim for support, makes no difference. Those having no claim may be as palpably injured as those who have.

But the statute upon which the action is based has received a clear construction by the Supreme Court of Illinois, in the case of the City of Chicago *vs.* Major, 18 Ill. R. 349. The death in that case was of a child four years of age, and the objection to a recovery was substantially the same as in this case; that the verdict of the jury must be for the present pecuniary loss; and that as the child

left no widow nor next of kin who were directly injured by the death, in a pecuniary point of view, therefore no recovery could be had. But such was not the view taken by the court. They say the first section of the act gives the action in terms the most comprehensive and clear. If the person injured, but surviving, could maintain the action, then and in every such case, the action may be maintained in favor of the next of kin, be they who they may. The court say the purpose of the second section of the act is two fold; first, to determine by whom the action shall be brought; second, for whose benefit, or how the money recovered shall be distributed. These purposes cover the whole ground as to the construction of the statute. If this is so, the question is a simple one: Who are the next of kin? are they children? No matter whether they are of tender years and have a legal claim for support, or whether they are passed their majority and have no claim for support—in contemplation of law they are construed alike to suffer pecuniary injury. If next of kin are fathers and mothers, or grandfathers and grandmothers having no claims for support, and by the law of the State are entitled to distribution, they are the persons meant by the second section of the act. In the case of Major there was no claim for support, nor any present pecuniary injury. Strictly speaking in this point of view, the death of the child was as likely to have been a relief as an injury. It might have cost the parents more to rear and educate the child than it would ever have returned in services. But the court held that it was a case subject to be compensated in damages, and the jury gave damages in the sum of $800.

In the case of Quin *vs.* Moore, 1 Smith (15 N. Y.) 432, it is decided that as the statute gives the action, the plaintiff is entitled to at least nominal damages. The death, in that case, was of a boy twelve years of age. The mother assigned her interest. The court said: "Although there was no next of kin directly dependent for "support, it was nevertheless a case out of which pecuniary injury "might and did grow." And as to the matter of nominal damages, I do not suppose the court meant to tell the jury that the plaintiff was entitled to no more than nominal damages. If they could give damages at all, they were the absolute judges of the amount they would give.

In the case of Oldfield *vs.* the New York and Harlem Railroad Company, 3 E. D. Smith, 103, the death was of a girl twelve years of age. The court refused to grant a non-suit on the ground that there was no special damage. They said: "The statute does not "create a liability in those cases where the relations to the persons "killed were such that the former had a legal right to some pecuni- "ary benefit which would result from a continuance of the life of "the latter, and which was lost by his death; but it is applicable to "any person who could himself have maintained the action if living. "A verdict for such damages as the jury might award would be sus- "tained by evidence of the injury and the defendants' negligence." This case is affirmed by the Supreme Court, 4 Kern. 310.

The next proposition of the plaintiffs in error to which I call the attention of the court, is this:

"No recovery can be had in this case because the plaintiffs, or "those for whom the action is brought, gain more by the death than "the maximum of damages which can be recovered."

The court which tried the cause was bound to reject this proposition because it was absolutely untrue in fact. None of the beneficiaries of this action received anything by the death, except the father, who is the plaintiff. The deceased left a will, and, by it, made his father sole legatee; and however much he may have been benefited pecuniarily by the death, the brothers and sisters were not, who, together with the father, are heirs and distributees, and, by the laws of the State, are entitled to the damages to be recovered. The brothers and sisters have not been benefitted by the death, and as things are, it is impossible that they ever can be. The property may go to them as heirs of the father, and so had not the brother been killed, might it have gone to them in the regular course of descent, for, had he have lived, he might have destroyed his will and died intestate. It is impossible, therefore, to affirm that three-fourths of those for whose benefit the action is brought, have been benefitted by the death beyond the maximum of damages which could be recovered in the action.

But can it be supposed that the legislature designed to place the

right to recover damages upon so uncertain a condition? A man is killed in a railroad collision; he has property; he leaves children; by his will he leaves all his property to others; according to the argument the children may have damages as for pecuniary injuries, because by the death they suffer pecuniary injury—that is to say, the man killed has, by the death, been deprived of the power to direct that his property should go to his children; but if he dies without a will, so that his property goes in the regular course of descent, or if having made a will, he bequeathes his property to his children, no recovery can be had, because by the death they have been benefitted beyond the maximum of damages recoverable, that is to say, if the property descending or bequeathed is greater than that maximum. To this result the argument leads.

But the right to recover can be placed upon no such fortuitous circumstances. The theory as to pecuniary injury is of a different kind. The presumption of law is, that a man's next of kin are benefitted by his life; that he can do better for them alive than dead; that his gains will accrue to them. They may be in greater or less degree; they may be none at all. However these things may be, the facts will speak for themselves, and produce their proper effects on the trial.

In the case of Pym *vs.* the Great Northern Railway Company, in the American Law Register, Vol. II., p. 234, the plaintiff's husband was killed. He was in the enjoyment of a life estate in land yielding an annual income of 3,864£. Upon his death the estate passed under the entail to the eldest son, subject to a charge of 1,000£ per annum to the plaintiff (the wife), and 800£ a year to the children. The deceased also left personal property to the amount of 3,390£, which was divided between the widow and the children. Now it may be that the widow and children derived a greater benefit by the death than they would by the life of the husband and the father —by the death they came to the enjoyment of ascertained amounts; but the jury gave damages in the sum of 13,000£, and that, too, although the deceased was of no profession or business, and had no income or property other than that already mentioned. Upon what principle were such damages awarded? clearly upon the principle that had the father lived he might have used his income for the ben-

efit of his family, though it would have been in his power not to do it. Had he have lived and thus prevented his property from going to the entail, he could have done better for his family than was done in the event of his death. And this is the presumption in every case, subject to the fullest inquiry as to the facts. Had Barron lived, his next of kin might have realized by his life more than they did by his death; and this, no doubt, was the view which the jury took of the case under the instructions of the court. Was it wrong?

"The jury may give such damages as they shall deem a fair and "just compensation with reference to the pecuniary injuries result- "ing from such death, to the wife and next of kin." But they may do more. They may give damages for the value of the life lost.

This may be regarded as loose and indefinite. But the rule as to other injuries is equally loose and indefinite, as in the case of defamation of character, assault and battery of the person, breach of promise of marriage contract; and yet juries find no difficulty in awarding damages, and no doubt the injury and damages will be found to vary according to the dignity, character and position of the person.

In the case of the Pennsylvania Railroad Company *vs.* McCloskey, 23 Penn. State R., 526, the court say, page 530, "the damages "must necessarily be measured by the value of the life lost, and "not by the pecuniary loss which the representatives shall have "thereby sustained. The sanction of the law lies in the duty "of compensation for the value of the life destroyed, measured ac- "cording to its own merits, and not according to the necessities of "the kindred." The Pennsylvania statute does not essentially differ from that of Illinois. It gives the right of action to the widow, if there is one; if not, to the personal representatives without saying to whom the damages shall go. But can this make any difference as to the value of the life lost, or, in other words, the amount of damages that shall be given? The case of McCloskey is almost a perfect parallel to the one before the court. McCloskey left neither widow nor children, but sisters only.

In the case of Dickens *vs.* the New York Central Railroad Company, 28 Barb. 41, the court say: "An action can be maintained

"by the personal representatives of a deceased person, whose death "has been wrongfully caused by the defendant, though the deceased "left no husband or wife or next of kin surviving who could ever "have any legal claim upon such person if living, for services or "support." The language of the New York act is: "In every "such case the jury may give such damages as they shall deem a "fair and just compensation, not exceeding $5,000, with reference "to the *pecuniary* injury resulting from such death, to the wife and "next of kin of such deceased person." The court say: "This is "permissive. The jury *may* give such damages, but they are not "restrained from giving more, as would have been done had it been "the intention of the legislature to limit the right of action to cases "where the deceased leaves a wife or next of kin who would have a "legal claim for services or support."

The third proposition of the plaintiff in error, as inferable from the record, is: "No recovery can be had if the colliding train was "the most or chiefly to blame."

I will not stop to analyze and compare the evidence touching this part of the case. Suffice it to say that the contract on the part of William T. Barron was with the defendant below. They owed him the duty of safe conduct; their responsibility was direct to him, and in this case no doubt exclusive; and that responsibility they can not avoid by leasing their road, or granting a license to another corporation to use it. A corporation derives all its powers from its charter. There is no power given by the charter to the Illinois Central Railroad Company to lease their road, and even if there had been, the question would still remain whether they would not be responsible for all injuries occurring by their sufferance, and which they had the power to prevent.

It was in evidence that the Michigan Central, upon which the mischief is sought to be charged by the plaintiff in error, used their road at the place where the accident occurred. In law, therefore, they are responsible for results. It has been repeatedly decided that a railroad corporation can not avoid their responsibilities by leasing their road.

See— 22 Ill. R. 105, Chicago & Rock Island Railroad Co. *vs.* Whipple.
20 Ill. R. 263, Ohio & Mississippi Railroad Co. *vs.* Dunbar.
4 Cush. 400. 26 Vermont 717.

There was no error in overruling the motion for a new trial.

The evidence of negligence was clear, and the damages were not excessive.

The train on which Mr. Barron was killed was running regularly as an accommodation train from Chicago to a point called Woodlawn, about nine or ten miles south of the city, and back, for the benefit of local passengers. The Michigan Central, on the morning of the occurrence, was nearly an hour behind time. The plaintiff's outward bound train would have met the incoming Michigan train had it have been on time. But they did not meet. The plaintiff's train went on to their point south, and commenced their return trip while the Michigan train was still in their rear. The Michigan train, called also the Cincinnati Express train, was proved to have been a swift train; yet the plaintiff's train was from eight to ten minutes behind time without any known necessity for it, at the same time that it was well known that a swift and dangerous train might be close upon them. The evidence showed that could the plaintiff's have got to the *round house*, so called, before the collision, they would have been out of danger; that the round house was about four miles distant from the place of collision, and that the plaintiffs' train could make that point in the time by which they were behind time.

The proof shows that, notwithstanding the plaintiffs should have apprehended danger, they took no pains to avoid it—they rung no bell, they sent back no signal, they did nothing to warn the approaching train. The plaintiffs' train, on the morning of the collision, stopt on the way to take on wood cars when there was no necessity for it; they had an engine of insufficient power, especially for an icy track, as the track was that morning.

I am not aware that it was pretended that the damages were excessive, provided that the plaintiff below had a right to recover.

LINCOLN CLARK,
Attorney for the Defendant in Error.

The fourth proposition as inferable from the record is "No recovery can be had, unless there was a present actual pecuniary loss."

The defendant in Error negatives the above proposition, and affirms that in law a recovery can be had for prospective as well as present injury. And this both in the reason of the case and by Statute. If as we suppose the Statute was passed to prevent the cause of action from being cut off, then if prospective injury was sustained in a case not fatal, it may be in a case that proved fatal. If a man was so injured that he could not carry on his business, damage would result though he lived, and surely if he died the same damage would accrue, only beyond all hope of redemption. Has the Statute made a distinction?—this is its language, "and in every such case the jury may give such damages as they shall deem a fair and just compensation, with reference to the pecuniary injuries resulting from such death to the wife and next of kin."

There is here no allusion to present injury exclusively, but to such injuries as shall result. If a man did gain a good livelihood for his family while living, it is a result from his death that he can do it no more, and it is as much a result for the next year as it is for this. It is true he might be taken away next year, and thus prevented from gaining a livelihood. So he might have been the next day after he was killed. These are the things for the jury to look into. But injury is not alone in cutting off from the means of gaining a livelihood; it is to be found as well in the prevention of accumulation of property.

Under this head see the following authorities heretofore cited, to-wit:

The City of Chicago *vs.* Major, 18 Ill. R. 344.
Quin *vs.* Moore, 1 Smith (15 N. Y.) 432.
Oldfield *vs.* the N. Y. & Har. R. R. Co., 3d E. D. Smith, 103. Affirmed, 4 Kern., 310.
Penn. R. R. Co. *vs.* McCloskey, 23 Penn. 530.

LINCOLN CLARK,
Attorney, &c.

W. C. Bryant & Co. Printers, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court,

OF THE UNITED STATES.

The Illinois Central Railroad Company,
Plaintiff in Error,
vs.
William Barron.
Defendant in Error.

Statement and Points.

The judgment in this action was rendered by the Circuit Court for the Northern District of Illinois, and comes here for examination on writ of error.

The defendant in error, executor of William T. Barron, deceased, brought his action against the plaintiff in error for damages, occasioned by the death of his testator, on the eighth of January, 1862, while getting off a car of the plaintiff in error, about three hundred feet north of the Kenwood station, near Chicago.

The facts in relation to the manner of his death appear in the bill of exceptions, commencing on page 10.

The deceased resided at Hyde Park, on the line of the Illinois Central Railroad, about six miles south of Chicago, where his business was, and was in the habit of passing daily, on a train of the plaintiff in error, which ran between

Chicago and Woodlawn, a station about three miles south of Hyde Park, and which train was known as the Hyde Park train. At Calumet, a station six miles south of Woodlawn, the Michigan Central Railroad connects with the Illinois Central Railroad, and the trains of both companies run thence on the Illinois Central Railroad to Chicago. On the morning when the testator was killed, the Hyde Park train when it arrived at Hyde Park where he got on board, was from five to seven minutes behind its regular time, and when passing at Kenwood, three-quarters of a mile northerly, was from seven to ten minutes behind its usual time of passing. It was, however, an accommodation train, making frequent stops, and occupying twenty-five minntes in running between Woodlawn and Chicago, a distance of eight miles and three quarters, and was, at the time of the collision, running on the time allowed it by the regulation, between Woodlawn and Chicago, and but for the collision, would have reached Chicago within its proper time.

The Cincinnati Express train of the Michigan Central Railroad Company was a very fast train. At the time the Hyde Park train left Woodlawn, the Cincinnati train was nearly an hour behind the regulation time, and had lost its precedence of the Hyde Park train from Woodlawn to Chicago. From Calumet to Woodlawn, a distance of six miles, the railroad track was straight. When the Hyde Park train started from Woodlawn for Chicago, the Cincinnati train was not in sight. Shortly afterwards it came up and passed Woodlawn and Hyde Park at a very high rate of speed. But before reaching Hyde Park a curve commences which extends to within 1,200, or 1,500 feet of Kenwood, whence the road is straight to Kenwood. When the Hyde Park train passed Kenwood, the Cincinnati train was seen approaching at a very high rate of speed, and at a distance of three-fourths of a mile; the track was icy, so that the Hyde Park train could not get in rapid motion. The Hyde Park train was in plain sight from the Cincinnati express train, and there was abundant time and space to have brought the latter train to a stop between the end of the curve and the place of collision if it had been properly managed; the conductor of the Cincin-

nati express train was provided with the time-table and card regulating the running of the trains of both companies, and there was a particular direction upon it to "Look out for the Hyde Park train at all places between the R. R. crossing [two miles south of Woodlawn] and Chicago:" the Cincinnati Express train approaching made no efforts to avoid a collision with the Hyde Park train, and continued running at so high a rate of speed that it was impossible for the Hyde Park train to get out of its way. When the conductor of the latter train discovered that a collision was inevitable he warned the passengers to get off the train, and while in the act of doing this the Cincinnati train ran into the car the testator was leaving and split it open, and caught him between it and the baggage car, and instantly killed him.

The testator was a bachelor about 35 years of age, and had an estate worth from $30,000 to $40,000. The plaintiff was his father, and he left brothers and sisters, one of whom had formerly received some assistance from him for her support.

When the evidence was closed the counsel for the plaintiff in error asked the Court to charge the jury in four propositions found on pages 13 and 14, and upon a refusal so to charge exceptions were taken.

The Court then charged the jury and further exceptions were taken on pages 16 and 17.

Points.

First.—The Court erred in declining to charge as requested in the first proposition on page 13. In order to recover any more than nominal damages it was necessary to show that there were next of kin in existence entitled to claim the indemnity given by the law, and that they had sustained a pecuniary loss justifying their claim.

The act authorizing the representatives of a deceased person to bring an action for damages occasioned by his death is found in Sess. Laws of Illinois of 1853, p. 97, and

Treat, Scates & Blackwell's Ed. of Statutes of Illinois, vol. 1, p. 422. Section second is as follows: "Every "such action shall be brought by and in the names of the "personal representatives of such deceased person, and the "amount recovered in any such action *shall be for the exclu-* "*sive benefit of the widow and next of kin of such* deceased "person, and shall be distributed to such widow and next "of kin in the proportion provided by law in relation to "the distribution of personal property left by persons dying "intestate; and in every such action *the jury may give* "*such damages as they shall deem a fair and just compen-* "*sation* WITH REFERENCE TO THE PECUNIARY INJURIES RESULT- "ING FROM SUCH DEATH *to the wife and next of kin* of such "deceased person, not exceeding the sum of five thousand "dollars."

The intention of the act was *to compensate* the widow and next of kin of the person killed *for the pecuniary injury* to them occasioned by his death. If the death caused them no *pecuniary injury* the act gave them no damages, for the *compensation* for that was to measure the damages.

The statute is in form like the act passed in New York in 1847, and amended in 1849, found in the 5th Ed. R. S., N. Y., vol. III. p. 589, § 4.

It has been examined in the Courts of that State in several cases in relation to this question, which have held:

1. That a husband as administrator of his wife, whose death was caused by the act of another, and who had no children, and no near relatives but sisters, could not recover for damages resulting by her death to him—and only for pecuniary damages sustained by her next of kin.

   23 N. York R., 158, *Dickens* v. *N. Y. Central R. R. Co.*

2. That in an action by a husband, as administrator of a wife whose death was caused by the act of another, leaving children, the possibility that the children would have received an estate increased by their mo-

ther's earnings could not be considered: their injury in the loss of maternal nurture and education in the opinion of a portion of the judges being regarded as within the "pecuniary" damages provided in the statute. In this opinion, which was *obiter*, a less number of judges than was necessary to pronounce judgment concurred.

24 N. Y. R., 471, *Tilley, Admr.* v. *Hudson River R. R. Co.*

3. That the administrator of a minor, might recover as compensation for his death by negligence of another, the pecuniary loss to his mother *in her being deprived of his services during his minority.*

15 N. Y. R., 432, *Quin, Admr.* v. *Moore.*

4. In a case similar to the last where the administrator of a little girl of six years old was killed, leaving a mother, and the Court charged the jury in the words of the statute, and by explanation told them the damages were to be a sum which in their opinion would be the pecuniary loss of the next of kin. Woodruff, J., doubted whether the explanation given to the jury was not too broad, and whether more than nominal damages should be given.

3 E. D. Smith, 103, *Oldfield* v. *N. Y. & Harlem R. R. Co.*

The case was subsequently examined in the Court of Appeals, where it was affirmed, as it would seem, on the ground that the exception taken was not explicit, and that although the explanation of the Judge on the trial was loose and inaccurate the defendant had failed to call his attention to it.

14 N. York, 310, *S. C.* read, p. 321.

In the case at bar, there was no one of the next of kin who could properly be said to sustain any pecuniary loss by the testator's death. None of his next of kin had any pecuniary interest in his life. No one

stood in the relation to him that the mother did to her child, and whose duty it would be to furnish it care and nurture. No one in the relation that the minor child did to its mother, who could receive the benefit of its services until it became of age. His father was not dependent upon him—not entitled to his future earnings, nor were his brothers or sisters, and indeed instead of a pecuniary loss to them his death gave them an estate of $30,000 to $40,000 which otherwise they could not then receive, and which they might never receive.

33 Barbour, 25, *Green* vs. *Hudson River R. R. Co.* Here it was held error for the Judge after stating to the jury the provisions of the statute that pecuniary loss alone could be recovered, to suggest that the refined education and manners which a wife had would greatly enhance the value of her society to her husband who was deprived of them.

Under a similar law in Pennsylvania, the Supreme Court of that State have held that the pecuniary damages to be assessed in the case of the loss of a minor son of the plaintiff's was to be estimated by the value of his services during his minority together with the actual expenses of his care while suffering from the injury before his death, and the funeral expenses incurred.

31 Penn. R. 373, *Penn. R. R.* vs. *Kelly.*
33 id. 318, *Same plff.* vs. *Zebe & Ux.*

And in a case where a widow brought her action for the death of her husband, the same Court held that although the jury might be charged that "much is left and much always must be left to your sound discretion," it was because this was but an addition to the instruction that "what the plaintiff had lost in a pecuniary point of view by the death of her husband,

namely, a reasonable support and subsistence for herself," was the rule to be observed.

35 Penn. 72. *Penn. R. R. Co.* vs. *Ogier.*

The ruling in these cases indicates most strongly the view that the damages to be given were not to be speculative, but for an actual pecuniary loss sustained by the surviving relatives. Had the jury been permitted to speculate as to the loss of the parents by the death of their minor son, it would be fair to presume that if they depended on their son's assistance he would be much more able to give it after he became of age than before. But the Court limited the recovery to the value of his services until then, because until then the parent was entitled to them. All the services of the minor child beyond his support was the parent's property—his money. This was lost by the child's death, and for this the damages were to be a compensation. Not a *solatium* for their wounded feeling.

The Courts of Illinois have also examined the statute.

18 Illinois, 349, *Chicago* vs. *Major.*—Here the person killed was a child four years old. It was held as in Pennsylvania that the pecuniary value of the child's services *during its minority*, which belonged to the father, was the proper measure of damrges.

26 Illinois, 400, *Chicago and R. I. R. R. Co.* vs. *Morris*, 1865.—In this case there was no averment in the declaration of any facts showing a pecuniary loss. The Court held that as no other loss could be shown, the declaration should have alleged facts showing it. The case of *Chicago* vs. *Major*, above cited, was referred to and the Court said that the objection arising on the pleadings was not raised there.

21 Illinois, 646.—In this case is an *obiter* remark that where a railroad permits another to run a construction train upon its track, it is responsible for its acts, and a case in 20 Illinois is referred to where it is held that a railroad com-

pany cannot by leasing its road without authority discharge itself from its duty to the public.

The case at bar does not fall within the category. By an express law of that State the Illinois Central Company was authorized to unite with the Illinois Central road at Calumet. The Illinois Central Company framed regulations for the running of the trains of the two companies, and if the conductor of the train of the Michigan Central Company had observed them the accident would not have occurred. The Illinois Central Company had performed all its duty to the public and its passengers when it devised safe-running regulations. It should no more be held liable for the wrongful act of one over whom it had no control than the keeper of an hotel for the wrongful act of one of his guests in stricking a fellow guest.

Second.—The Court erred in refusing to charge the second proposition, that the plaintiff could recover only nominal damages until they had shown that his next of kin had some legal interest in his life, and that, by his death, they had been deprived of something to which they had a legal right.

26 Illinois 400 *Chicago and R. I. R. R. Co*, Morris, *supra.*

A "*compensation* with reference to the *pecuniary injuries* resulting from such death," is within the discretion of the jury. Not a compensation for the affliction the death occasions, nor for the possibility that the deceased might, if he had lived, make presents to the relatives. If it had been shown that his next of kin were paupers, and he bound to support them, and that he could, from his earnings, and that his death deprived them of support, and this had been pleaded, the jury would have had something upon which to

exercise their judgment in estimating a pecuniary loss. But no such thing was either alleged or shown. No one of his next of kin was alleged or shown to be dependent upon him.

Third.—The Court erred in refusing to charge the third proposition of the defendant's counsel, that if the next of kin of the testator inherited from him a greater pecuniary benefit than the maximum which they could recover, they cannot have sustained pecuniary injury by his death.

The ground upon which the recovery must be had, was pecuniary injury to the next of kin, occasioned by his death. If his death necessarily and directly involved no pecuniary loss, and it did directly put money in their pockets, they could have sustained no pecuniary injury.

Fourth.—The Court erred in refusing to charge the fourth proposition of the defendant's counsel.

If the jury should find the death was occasioned solely by the carelessness or default of the persons in charge of the Cincinnati Express train, and that the defendants had no control over them, the very fact would preclude the idea of any negligence or carelessness of the defendant; and yet the jury were, in the refusal to charge as proposed, left, in such a case, to find a verdict against the defendant for a negligence its servants were not guilty of.

pany cannot by leasing its road without authority discharge itself from its duty to the public.

The case at bar does not fall within the category. By an express law of that State the Illinois Central Company was authorized to unite with the Illinois Central road at Calumet. The Illinois Central Company framed regulations for the running of the trains of the two companies, and if the conductor of the train of the Michigan Central Company had observed them the accident would not have occurred. The Illinois Central Company had performed all its duty to the public and its passengers when it devised safe-running regulations. It should no more be held liable for the wrongful act of one over whom it had no control than the keeper of an hotel for the wrongful act of one of his guests in stricking a fellow guest.

Second.—The Court erred in refusing to charge the second proposition, that the plaintiff could recover only nominal damages until they had shown that his next of kin had some legal interest in his life, and that, by his death, they had been deprived of something to which they had a legal right.

26 Illinois 400 *Chicago and R. I. R. R. Co*, Morris, *supra*.

A "*compensation* with reference to the *pecuniary injuries* resulting from such death," is within the discretion of the jury. Not a compensation for the affliction the death occasions, nor for the possibility that the deceased might, if he had lived, make presents to the relatives. If it had been shown that his next of kin were paupers, and he bound to support them, and that he could, from his earnings, and that his death deprived them of support, and this had been pleaded, the jury would have had something upon which to

exercise their judgment in estimating a pecuniary loss. But no such thing was either alleged or shown. No one of his next of kin was alleged or shown to be dependent upon him.

Third.—The Court erred in refusing to charge the third proposition of the defendant's counsel, that if the next of kin of the testator inherited from him a greater pecuniary benefit than the maximum which they could recover, they cannot have sustained pecuniary injury by his death.

The ground upon which the recovery must be had, was pecuniary injury to the next of kin, occasioned by his death. If his death necessarily and directly involved no pecuniary loss, and it did directly put money in their pockets, they could have sustained no pecuniary injury.

Fourth.—The Court erred in refusing to charge the fourth proposition of the defendant's counsel.

If the jury should find the death was occasioned solely by the carelessness or default of the persons in charge of the Cincinnati Express train, and that the defendants had no control over them, the very fact would preclude the idea of any negligence or carelessness of the defendant; and yet the jury were, in the refusal to charge as proposed, left, in such a case, to find a verdict against the defendant for a negligence its servants were not guilty of.

Code Law Ills 1858 942, 951

Fifth.—The Court erred in the portion of the charge covered by the fifth exception, folio 45, page 16.

How a jury were, under the statute, to "give such "damages as they shall deem *a just and fair compensation* "*with reference to* THE PECUNIARY INJURIES *resulting from* "*such death* to the wife and next of kin," when the "*de-* "*ceased left no kin surviving him who had any legal claim* "*on him, if living, for support*," in the language of the charge, it is difficult to see. The damages are to be a "*compensation*" for "*pecuniary injury*" to the next of kin, and it would seem that without some *pecuniary interest* which was affected, there could be no *pecuniary injury to be compensated.*

Sixth.—The Court erred in the portion of the charge covered in the Sixth Exception, p. 17, fol. 46.

It was directly calculated to withdraw from their consideration the provisions of the act, and leave them at liberty to assess the damages in the nature of punitive damages for the killing of the deceased irrespective of any pecuniary injury to his next of kin.

Seventh.—The Court erred in the portion of the charge covered in the Seventh Exception.

The reasons given under the last point are applicable. but, in addition, the jury were authorized by it distinctly to disregard the statute and assess the damages arbitrarily and irrespective of any question of *pecuniary injury.*

Eighth.—The Court erred in the portion of the charge covered by the Eighth and Ninth Exceptions.

The Courts of New York held that a supposed interest in the savings which a mother might by her exertions make to the increase of her husband's estate was not an element in assessing the *pecuniary injuries* sustained by her children by her death. By the charge given here the jury were in effect instructed that the father and brothers and sisters of an unmarried man of thirty-five years of age had a pecuniary interest in his further accumulations, and his prospective increase of wealth. And yet the presumptions at that age were strongly against the idea that on his death, which at the usual age of man was thirty-five years distant, they would be his next of kin.

It is submitted, therefore, that it was wrong to invite the jury into a speculation as to whether he would or would not increase his means, would or would not marry, and would or would not leave issue. These portions of the charge withdrew the examination of the jury from the true question—the *pecuniary injury* of the next of kin occasioned by his death—to a speculation as to uncertainties compounded with uncertainties, and probabilities not depending upon any facts before them, and estimates of damages founded on such speculation.

Ninth.—The Court erred in the portion of the charge covered by the Tenth Exception, (fol. 48, p. 17.)

By the laws of Illinois the Illinois Central Railroad Company was authorized to unite with other railroad companies and to make agreements in relation to its connections.

Cooke's Ed. Laws Illinois, (1858,) Vol. 2, p. 937
~~942, § 6.~~ amendatory act
~~Illinois Sess. Laws 1857~~ p.

The fact admitted on the trial that the railroad track from Hyde Park to Chicago was constructed by the Illinois Central Railroad Company, and that all trains run by the Michigan Central upon it were run under contracts between the two companies, could not warrant the portion of the charge, that under such circumstances if the jury should find that the Cincinnati Express train which ran into the Hyde Park train "was under the sole management of the agents of the Michigan Central Road, *and that the death was caused entirely by their fault*, * * * the defendant would still be responsible."

The plaintiff in error in pursuance of the law of the State, permitted the Michigan Central Company to run over the Illinois Central Company's road, under regulations which it was bound to observe; and which, if observed, would have prevented the collision; and when the jury should find that the collision occurred entirely by the fault of the Michigan Central train, they were instructed to assess the damages upon the company owning the road, which they found free from all fault.

The proposition on its face is repulsive to the dictates of common sense and the rules of responsibility. If the Michigan Company's servants in charge of the Cincinnati Express train were guilty of the entire fault of causing the collision, their negligence was a gross one, and the Illinois Central Company's servants were innocent of any actual or permissive wrong; they violated no duty to deceased. The company was not a warrantor of the lives of its passengers against negligent or wilful acts wrongfully committed by another. Its duty was to provide proper vehicles to carry its passengers and to run them with skill, and without negligence. It was not to warrant passengers against an injury caused by a careless driving of a horse or load against the car, or one occasioned by the wrong of another in placing an obstruction upon its track. As well might a turnpike company be made responsible for the negligent or wrongful driving of a carriage upon its road against another. The Illinois Central Railroad Company had no control over the Cincinnati train; it had only contracted with it for the use of the road, under proper regulations, which would ensure safety.

Angel and Ames, carriers, § 521. "For an injury happening to the person of a passenger by mere accident, without fault on their part, they [carriers] are not responsible; but are liable only for want of due care, diligence, or skill." (See Cases there cited.)

Here, however, when the jury should find the plaintiff in error, exercised "*due care, diligence and skill*" and that it and its servants were without negligence or fault, they were directed to give their verdict against the plaintiff in error.

Tenth.—The judgment should be reversed, and the Court below directed to order a new trial.

WILLIAM TRACY,
Of Counsel for
plaintiff in Error.